



6450-01-P

## **DEPARTMENT OF ENERGY**

### **Western Area Power Administration**

#### **Conformed Power Marketing Criteria or Regulations for the Boulder Canyon Project**

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Conformance of Power Marketing Criteria in Accordance with the Hoover Power Allocation Act of 2011.

**SUMMARY:** The Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy (DOE), is modifying Part C of its Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (1984 Conformed Criteria) published in the Federal Register on December 28, 1984, as required by the Hoover Power Allocation Act of 2011 (HPAA) described herein. This modification will result in the conformance of the 1984 Conformed Criteria to the HPAA. The 2012 Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (2012 Conformed Criteria) will provide the basis for marketing the long-term hydroelectric resources of the Boulder Canyon Project (BCP) beyond September 30, 2017, when Western's current electric service contracts expire. Additional power marketing criteria for new allocations will be established by Western through a subsequent public process. This Federal Register notice (FRN) is not a call for applications. A call for applications from those interested in an allocation of BCP power will be provided for in a future notice.

**DATES:** The 2012 Conformed Criteria will become effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESS:** Information regarding the 2012 Conformed Criteria is available for public inspection at the Desert Southwest Customer Service Regional Office, Western Area Power Administration, 615 South 43<sup>rd</sup> Avenue, Phoenix, AZ 85005 or at its website: <http://www.wapa.gov/dsw/pwrmtkt>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mike Simonton, Public Utilities Specialist, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005, telephone (602) 605-2675, e-mail [Post2017BCP@wapa.gov](mailto:Post2017BCP@wapa.gov).

**SUPPLEMENTARY INFORMATION:**

The BCP was authorized by the Boulder Canyon Project Act of 1928 (Act) (43 U.S.C. 617). Under Section 5 of the Act, the Secretary of the Interior marketed the capacity and energy from the BCP under electric service contracts effective through May 31, 1987. On December 28, 1984, Western published the 1984 Conformed Criteria (49 FR 50582) to implement applicable provisions of the Hoover Power Plant Act of 1984 (43 U.S.C. 619) for the marketing of BCP power through September 30, 2017. On December 20, 2011, Congress enacted the Hoover Power Allocation Act of 2011 (Public Law 112-72), which provides direction and guidance in several key aspects of marketing BCP power after the existing contracts expire in 2017.

Section 2(f) of the HPAA provides that Subdivision C of the 1984 Conformed Criteria shall be deemed to have been modified to conform to the HPAA, and the Secretary of Energy shall cause to be included in the Federal Register notice conforming the text of the regulations to such modifications. This FRN conforms the text of the 1984 Conformed Criteria, as appropriate, to the HPAA.

## **Description of Revisions to Subdivision C of the 1984 Conformed Criteria Required by the Enactment of HPAA**

### **Part 1. General**

#### **Section A – Purpose and Scope**

A reference to HPAA has been integrated into the purpose and scope section.

#### **Section B – Authorities**

The HPAA has been added to the listed authorities.

#### **Section C – Contractual Information**

The section has been updated to incorporate the following provisions of HPAA:

(1) Section 2 (d) (2) (E) that requires each contract offered pursuant to Schedule D shall include a provision requiring the new allottee to pay a proportionate share of its State's respective contribution (determined in accordance with each State's applicable funding agreement) to the cost of the Lower Colorado River Multi-Species Conservation Program (MSCP) (as defined in Section 9401 of the Omnibus Public Land Management Act of 2009 (Public Law 111-11; 123 Stat.1327)), and to execute the Boulder Canyon Project Implementation Agreement Contract No. 95-PAO-10616 (Implementation Agreement).

(2) Section 2 (g) (1) (A) that requires each contract offered shall expire on September 30, 2067.

(3) Section 2 (g) (2) (A) that prescribes the contract offered to the Metropolitan Water District of Southern California (MWD) will not restrict use of capacity and energy, provided that to the extent practicable and consistent with sound water management and conservation practice, MWD shall allocate such capacity and energy to pump available Colorado River water prior to using such capacity and energy to pump California State project water.

(4) Section 2 (g) (4) that requires each contract offered shall (i) authorize and require Western to collect from new allottees a pro rata share of Hoover Dam repayable advances paid for by contractors prior to October 1, 2017, and remit such amounts to the contractors that paid such advances in proportion to the amounts paid by such contractors as specified in Section 6.4 of the Implementation Agreement; (ii) permit transactions with an independent system operator; and (iii) contain the same material terms included in Section 5.6 of the current BCP firm electric service power sales contracts in existence on December 20, 2011, the date of enactment of the HPAA.

#### Part VI. Boulder Canyon Project

Part VI of the 1984 Conformed Criteria is replaced in its entirety in order to conform to and facilitate the following provisions of Section 2 of the HPAA:

(1) Section 2 (a) that provides for contract offers to existing Schedule A contractors in predefined contract quantities for delivery commencing October 1, 2017.

(2) Section 2 (b) that provides for contract offers to existing Schedule B

contractors in predefined contract quantities for delivery commencing October 1, 2017.

(3) Section 2 (c) that provides for excess energy provisions for deliveries commencing October 1, 2017.

(4) Section 2 (d) (2) that provides for the following:

i) the creation of a resource pool equal to 5 percent of BCP's full rated capacity of 2,074,000 kilowatts, and associated firm energy, as depicted in Schedule D. Western shall offer prescribed portions of Schedule D contingent capacity and firm energy to entities not receiving contingent capacity and firm energy under Schedule A and/or Schedule B for deliveries commencing October 1, 2017.

ii) additional guidance related to the disposition of contingent capacity and firm energy to existing contractors and potential new allottees as described in the 2012 Conformed Criteria.

iii) guidance related to the disposition Schedule D contingent capacity and firm energy that is not allocated and contracted for prior to October 1, 2017, as described in the 2012 Conformed Criteria.

(5) Section 2 (i) that provides guidance in the event any existing contractor fails to accept an offered contract as described in the 2012 Conformed Criteria.

(6) Section 2 (j) that provides guidance regarding Western's obligations in the event water is not available to produce the contingent capacity and firm energy set forth in Schedule A, Schedule B, and Schedule D, as described in the 2012

Conformed Criteria.

## **Regulatory Procedure Requirements**

### *Determination Under Executive Order 12866*

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

### *Environmental Compliance*

In accordance with the DOE National Environmental Policy Act Implementing Procedures (10 CFR 1021), Western has determined that these actions fit within a class of action B4.1 Contracts, policies, and marketing and allocation plans for electric power, in Appendix B to Subpart D to Part 1021 – Categorical Exclusions Applicable to Specific Agency Actions.

## **Revised 2012 Conformed Criteria**

Part I and Part VI of Section C of the 1984 Conformed Criteria are amended to read as follows:

C. Conformed General Consolidated Power Marketing Criteria or Regulations for Desert Southwest Region Projects

### Part I. General

Section A. Purpose and Scope. In accordance with Federal power marketing authorities in Reclamation Law and the Department of Energy Organization Act of 1977, Western has developed and, pursuant to the Hoover Power Allocation Act of 2011 (Public Law 112-72) (HPAA), has modified the Conformed General

Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (1984 Conformed Criteria) published in the Federal Register (49 FR 50582) on December 28, 1984. These 2012 Conformed Criteria establish general marketing principles for power generated at Federal projects under the marketing jurisdiction of Western's Desert Southwest Regional Office (DSW). This document will serve as new general power marketing criteria for the Boulder Canyon Project (BCP) resource. Western may establish additional power marketing criteria, as deemed necessary and appropriate as determined by Western, in a subsequent public process. The power marketing criteria for the Parker-Davis Project (PDP) and Central Arizona Project (CAP) remain unchanged with the implementation of the 2012 Conformed Criteria. The establishment of these 2012 Conformed Criteria shall serve as conformance of the 1984 Conformed Criteria pursuant to Section 2 (f) of the HPAA.

Section B. Authorities. Federal power in the Desert Southwest Region is marketed in accordance with the power marketing authorities in Federal Reclamation Law (Act of June 17, 1902, (32 Stat. 388), and all acts amendatory thereof or supplementary thereto); the Department of Energy Organization Act of 1977 (91 Stat. 565); and in particular, those acts and amendments enabling the Boulder Canyon Project (45 Stat. 1057); Hoover Power Plant Act of 1984 (Public Law 98-381); Hoover Power Allocation Act of 2011 (Public Law 112-72); Parker-Davis Project (49 Stat. 1028, 1039; 68 Stat. 143); and the Colorado River Basin Project (82 Stat. 885).

Section C. Contractual Information. Power contracts will be implemented as existing contracts terminate. The existing BCP contracts terminate on September 30, 2017.

Western will offer power contracts to each contractor containing the terms and conditions and any special provisions that may be applicable to the power marketed under the 2012 Conformed Criteria. The contracts will identify the amounts of capacity and energy to be delivered, the point(s) of delivery, and the maximum rate of delivery at each point of delivery. The contracts will be prepared and modified as necessary. Western shall endeavor to maintain similar, if not identical, contractual terms and conditions and any special provisions amongst all BCP contractors.

Each long-term power service contract entered into or amended shall contain provisions requiring the contractor to develop and implement energy conservation measures as demonstrated in integrated resource planning documents.

The PDP, CAP, and BCP projects shall be operationally integrated to improve the efficiency of the Federal system in accordance with: the operational constraints of the Colorado River, hydro-project power plants, as may be imposed by the Secretary of the Interior or authorized representatives; applicable laws; the general terms, conditions, and principles contained in these 2012 Conformed Criteria; and the General Power Contract Provisions in effect.

Long-term contracts for BCP power will commence on October 1, 2017, and terminate on September 30, 2067.



Contingent capacity is capacity that is normally available, except during either forced or planned outages, or unit de-ratings that affect power plant capability. All BCP capacity shall be marketed by Western as contingent capacity to the contractors.

Western's obligations to deliver BCP power to the contractors will be subject to availability of the water needed to produce such contingent capacity and firm energy. In the event that water is not available to produce the contingent capacity and firm energy set forth in Schedule A, Schedule B, and Schedule D, Western shall adjust the contingent capacity and firm energy offered under those schedules in the same proportion as those contractors' allocations of Schedule A, Schedule B, and Schedule D contingent capacity and firm energy bears to the full rated contingent capacity and firm energy obligations.

Contracts for BCP power will allow for reductions in capacity due to generating unit outages or available capacity reductions caused by forced outages, planned or unplanned maintenance activities, or reservoir drawdown. These reductions will also be applied on a proportionate basis as previously described.

Each BCP contractor will be required to contractually agree to supply its own reserves for power that meet or exceed the Western Electricity Coordinating Council's minimum reserve requirements.

Each contract for BCP power will contain a provision by which any dispute or disagreement as to interpretation or performance of the provisions of the Hoover Power Allocation Act of 2011, or of applicable regulations or of the contract may

be determined by arbitration or court proceedings.

The contract offer to the Metropolitan Water District of Southern California for BCP capacity and energy will not restrict the use to which capacity and energy contracted for by the Metropolitan Water District of Southern California may be placed within the State of California; provided, that to the extent practicable and consistent with sound water management and conservation practice, the Metropolitan Water District of Southern California shall allocate such capacity and energy to pump available Colorado River water prior to using such capacity and energy to pump California State water project water.

Contracts offered shall contain the same material terms included in Section 5.6 of those long-term contracts for purchases from the Hoover Power Plant that were made in accordance with the Hoover Power Plant Act of 1984 and are in existence as of December 20, 2011, the enactment date of the Hoover Power Allocation Act of 2011. These provisions outline the use of generation by the contractor. Within the constraints of river operation, each BCP power contractor is permitted to schedule loaded and unloaded synchronized generation, the sum of which cannot exceed the amount of contingent capacity reserved for the individual contractor. To the extent that energy entitlements are not exceeded, such previously scheduled unloaded synchronized generation may be used for regulation, ramping, and spinning reserves through the use of a dynamic signal. These functions will be deployed by Western and the Bureau of Reclamation (Reclamation), in cooperation with the BCP power contractors, and implemented by contract through written

operating or scheduling instructions. Energy used for the purpose of supplying unloaded synchronized generation to BCP power contractors will be accounted for on a monthly basis, and will be supplied by the individual contractors through reductions in energy deliveries, in subsequent months, or as otherwise mutually agreed by Western and the contractor, as specified in the power contracts.

Whenever actual generation in any year is less than the firm commitments (4,527.001 million kilowatt-hours (kWh)), such deficiency shall be borne by the holders of contracts in the ratio that the sum of the quantities of firm energy to which each contractor is entitled, to the total firm commitments. Upon an individual contractor's request, Western will purchase energy, if necessary, specifically for the purpose of fulfilling the energy obligations resulting from Schedule A, Schedule B, and Schedule D allocations. Any costs incurred as a result of the contractor's request for firming energy shall be borne solely by the requesting contractor and will be reimbursed in the year in which the costs were incurred.

The individual projects will remain financially segregated for the purposes of accounting and project repayment. The Desert Southwest Region rate schedules for each individual project will be developed to satisfy cost recovery criteria for each project. In general, the cost recovery criteria will include components such as operation and maintenance, replacements, betterments, amortization of long-term debt with interest, and other financial obligations of the project. Until the end of the repayment period for the CAP, BCP and PDP will provide for surplus revenues by including the equivalent of 4 ½ mills per kWh in the rates charged to contractors in

Arizona and by including the equivalent of 2 ½ mills per kWh in the rates charged to contractors in California and Nevada. After the repayment period of the CAP, the equivalent of 2 ½ mills per kWh shall be included in the rates charged to all contractors in Arizona, Nevada, and California.

In order to allow Reclamation to comply with required minimum water releases and to allow Western to receive purchased energy during offpeak load hours, all power contractors may be required to schedule a minimum rate of delivery during such offpeak load hours. The percentage of energy to be taken by the contractors at the minimum scheduled rate of delivery shall be established on a seasonal basis, and may be increased or decreased as conditions dictate. The monthly minimum rate of delivery for each power contractor will be computed by dividing the number of kilowatt-hours to be taken during the month by a contractor at the minimum rate of delivery, by the number of offpeak load hours in the month. The number of kilowatt-hours to be taken during offpeak load hours at the minimum rate of delivery will not exceed 25 percent of the contractor's monthly energy entitlement. Offpeak load hours will be defined in the contracts based on individual system characteristics.

No contractor shall sell for profit any of its allocated capacity and energy to any customer of the contractor for resale by that customer.

Contracts for BCP power shall permit transactions with an independent system operator.

Contract offers shall contain a provision requiring the new allottee to execute the

Boulder Canyon Project Implementation Agreement Contract No. 95-PAO-10616  
(Implementation Agreement).

Any new allottees or existing contractors with an increased allocation shall be required to pay a pro rata share of Hoover Dam repayable advances paid for by contractors prior to October 1, 2017. Western shall collect such payments from new allottees or existing contractors with an increased allocation and remit such amounts to the contractors that paid such advances in proportion to the amounts paid by such contractors as specified in Section 6.4 of the Implementation Agreement.

Contract offers shall contain a provision requiring the new allottee to pay a proportionate share of its State's respective contribution (determined in accordance with each State's applicable funding agreement) to the cost of the Lower Colorado River Multi-Species Conservation Program (as defined in Section 9401 of the Omnibus Public Land Management Act of 2009 (Public Law 111-11; 123 Stat. 1327)).

Parts II through V remain unchanged.

#### Part VI. Boulder Canyon Project

Section A. Schedule A Long-Term Contingent Power. Electric service contracts for long-term contingent capacity and firm energy under new terms and conditions will be offered to existing Boulder Canyon Project contractors in the following amounts:

Schedule A  
Long-term Schedule A contingent capacity and associated firm energy for offers of contracts to  
Boulder Canyon Project contractors

Contractor	Contingent Capacity (kW)	Firm energy (thousands of kWh)		
		Summer	Winter	Total
Metropolitan Water District of Southern California.....	249,948	859,163	368,212	1,227,375
City of Los Angeles.....	495,732	464,108	199,175	663,283
Southern California Edison Company....	280,245	166,712	71,448	238,160
City of Glendale.....	18,178	45,028	19,297	64,325
City of Pasadena.....	11,108	38,622	16,553	55,175
City of Burbank.....	5,176	14,070	6,030	20,100
Arizona Power Authority.....	190,869	429,582	184,107	613,689
Colorado River Commission of Nevada.....	190,869	429,582	184,107	613,689
United States, for Boulder City.....	20,198	53,200	22,800	76,000
Totals.....	1,462,323	2,500,067	1,071,729	3,571,796

Section B. Schedule B Long-Term Contingent Power. Electric service contracts for long-term contingent capacity and firm energy under new terms and conditions will be offered to existing Boulder Canyon Project contractors in the following amounts:

Schedule B  
Long-term Schedule B contingent capacity and associated firm energy for offers of contracts to  
Boulder Canyon Project contractors

Contractor	Contingent Capacity (kW)	Firm energy (thousands of kWh)		
		Summer	Winter	Total
City of Glendale.....	2,020	2,749	1,194	3,943
City of Pasadena.....	9,089	2,399	1,041	3,440
City of Burbank.....	15,149	3,604	1,566	5,170
City of Anaheim.....	40,396	34,442	14,958	49,400
City of Azusa.....	4,039	3,312	1,438	4,750
City of Banning.....	2,020	1,324	576	1,900
City of Colton.....	3,030	2,650	1,150	3,800
City of Riverside.....	30,296	25,831	11,219	37,050
City of Vernon.....	22,218	18,546	8,054	26,600
Arizona.....	189,860	140,600	60,800	201,400
Nevada.....	189,860	273,600	117,800	391,400
Totals.....	507,977	509,057	219,796	728,853

Contracts for the amounts of capacity and associated energy for the States of Arizona and Nevada resulting from Schedule B shall be offered to the Arizona Power Authority and the Colorado River Commission of Nevada respectively, as the agency specified by State law as the agent of such State for purchasing power from the Boulder Canyon Project.

Section C. Energy in Excess of Firm Commitments. Energy generated in any year of operation in excess of 4,501.001 million kilowatt-hours shall be delivered in the following order:

## Schedule C – Excess Energy

---

### Priority of Excess Energy

---

- A. First: The first 200 million kWh for use within the State of Arizona; Provided, That in the event excess energy in the amount of 200 million kWh is not generated during any year of operation, Arizona shall accumulate a first right to delivery of excess energy subsequently generated in an amount not to exceed 600 million kWh, inclusive of the current year's 200 million kWh. Said first right of delivery shall accrue at a rate of 200 million kWh per year for each year excess energy in the amount of 200 million kWh is not generated, less amounts of excess energy delivered.
  - B. Second: Meeting Hoover Dam contractual obligations under Section A (Schedule A), Section B (Schedule B), and Section D (Schedule D), not to exceed 26 million kWh in each year of operation.
  - C. Third: Meeting the energy requirements of the States of Arizona, California, and Nevada; such available excess energy to be divided equally among the three States.
- 

Section D. Schedule D Long-term Contingent Power. A resource pool of contingent capacity and associated firm energy is created for allocation by Western to eligible entities. Western shall offer Schedule D contingent capacity and firm energy to entities not receiving contingent capacity and firm energy under Section A (Schedule A) or Section B (Schedule B) (referred to herein as “New Allottees”) for delivery commencing October 1, 2017.

Electric service contracts for long-term contingent capacity and firm energy under new terms and conditions will be offered to eligible entities in the following amounts:



Schedule D  
Long-term Schedule D resource pool of contingent capacity and  
associated firm energy for New Allottees

State	Contingent Capacity (kW)	Firm energy (thousands of kWh)		
		Summer	Winter	Total
New Entities Allocated by the Secretary of Energy	69,170	105,637	45,376	151,013
New Entities Allocated by State				
Arizona.....	11,510	17,580	7,533	25,113
California.....	11,510	17,580	7,533	25,113
Nevada.....	11,510	17,580	7,533	25,113
Totals.....	103,700	158,377	67,975	226,352

In the case of resources committed to New Entities Allocated by State referred to in Schedule D, the following is prescribed:

- A. Western is allocating 11.1 percent of the total Schedule D contingent capacity and firm energy to the Arizona Power Authority for allocation to New Allottees in the State of Arizona, for delivery commencing October 1, 2017, for use in the Boulder City Area marketing area.
- B. Western is allocating 11.1 percent of the total Schedule D contingent capacity and firm energy to the Colorado River Commission of Nevada for allocation to New Allottees in the State of Nevada, for delivery commencing October 1, 2017, for use in the Boulder City Area marketing area.
- C. Western shall allocate 11.1 percent of the total Schedule D contingent capacity and firm energy to New Allottees within the State of California, for

delivery commencing October 1, 2017, for use in the Boulder City Area marketing area.

Section E. General Marketing Criteria. Western is establishing the following general marketing criteria to be used in the allocation of Schedule D contingent capacity and firm energy:

A. General Eligibility Criteria

Western will apply the following general eligibility criteria to applicants seeking a power allocation:

- 1) All qualified applicants must be eligible to enter into contracts under Section 5 of the Boulder Canyon Project Act (43 U.S.C. 617d) or be Federally recognized Indian tribes.
- 2) All qualified applicants must be located within the established Boulder City Area marketing area.

B. General Allocation Criteria

Western will apply the following general allocation criteria to applicants seeking an allocation of the 11.1 percent of Schedule D contingent capacity and firm energy to New Entities Allocated by State and the remaining 66.7 percent of Schedule D contingent capacity and firm energy:

- 1) In the case of Arizona and Nevada, Schedule D contingent capacity and firm energy for New Allottees other than federally recognized Indian tribes shall be offered through the Arizona

Power Authority and the Colorado River Commission of Nevada, respectively. Schedule D contingent capacity and firm energy allocated to federally recognized Indian tribes shall be contracted for directly with Western.

- 2) Western shall prescribe additional marketing criteria developed pursuant to a public process.

Section F. Contract Offer Schedule. In the event that contract offers for Schedule A, Schedule B, or Schedule D are not accepted by existing contractors or new allottees, the following shall determine the distribution of the associated contingent capacity and firm energy:

A. Schedule A and Schedule B

If any existing contractor fails to accept an offered contract, Western shall offer the contingent capacity and firm energy thus available first to other entities in the same State listed in Schedule A and Schedule B, second to other entities listed in Schedule A and Schedule B, third to other entities in the same State that receive contingent capacity and firm energy under Schedule D, and last to other entities that receive contingent capacity and firm energy under Schedule D.

B. Schedule D – 66.7 Percent Allocated by Western.

Any of the 66.7 percent of Schedule D contingent capacity and firm energy that is to be allocated by Western that is not allocated and placed under contract by October 1, 2017, shall be returned to those contractors shown in

Schedule A and Schedule B in the same proportion as those contracts' allocations of Schedule A and Schedule B contingent capacity and firm energy.

C. Schedule D – 33.3 Percent Allocated by State.

Any of the 33.3 percent of Schedule D contingent capacity and firm energy that is to be distributed within the States of Arizona, Nevada, and California that is not allocated and placed under contract by October 1, 2017, shall be returned to the Schedule A and Schedule B contractors within the State in which the Schedule D contingent capacity and firm energy were to be distributed, in the same proportion as those contractors' allocations of Schedule A and Schedule B contingent capacity and firm energy.

Parts VII through VIII remain unchanged.

Dated: June 7, 2012

Anthony H. Montoya  
Acting Administrator

[FR Doc. 2012-14572 Filed 06/13/2012 at 8:45 am; Publication Date: 06/14/2012]